1989

Charlesworth v. State of California : Brief of Respondent

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH

LAURIAN P. CHARLESWORTH, Plaintiff/Respondent, vs. STATE OF CALIFORNIA and BLANCA H. CHARLESWORTH, Defendant/Appellant.	BRIEF OF RESPONDENT CASE NO: 890297-CA PRIORITY: 14b

Appeal from an order of the
Second Judicial District Court
Of Weber County
Judge Stanton M. Taylor

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LIST OF PARTIES

Laurian P. Charlesworth is the Plaintiff and Respondent herein.

Blanca H. Charlesworth is the URESA Petitioner, Defendant and Appellant herein.

State of California is the initiating state URESA Defendant and Appellant herein.

State of Utah is the responding URESA Defendant and Appellant herein.

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STATEMENT OF JURISDICTION

The subject matter of this appeal is that of a domestic relations Order relative to child support and visitation. Jurisdiction is vested in the Utah Court of Appeals pursuant to the Utah Code Annotated § 78-2a-3(2)(h) which states:

> (2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:
>
> (h) appeals from district court involving domestic relations cases, including but not limited to divorce, annulment, property division, child custody, support, visitation, adoption and paternity;...

NATURE OF PROCEEDINGS

In 1988 Blanca H. Charlesworth and the State of California by and through the State of Utah petitioned the District Court for the County of Weber, State of Utah, to obtain an obligation of support against Laurian P. Charlesworth pursuant to the Utah Uniform Reciprocal Enforcement of Support Act, (hereinafter referred to as URESA).

At a hearing before the Domestic Relations Commissioner for Weber County, a payment of child support was determined to be paid by Mr. Charlesworth in the sum of $76.00 per month per child, payable through the Weber County Clerk's Office, but conditioned upon Mr. Charlesworth being able to visit with the minor children. An objection was filed by Blanca H. Charlesworth and the State of California through the Utah Attorney General's Office to the Commissioner's recommendations and the trial Judge, Stanton M. Taylor, affirmed the recommendations of the Commissioner, ordering Mr. Charlesworth to pay the sum of $76.00 per month per child to the Clerk of the Court with said sums to be retained by the Clerk of the Court until such time as Mr. Charlesworth was able to exercise visitation with the minor children which benefit he had been denied of since the time of the divorce filed by Mr. Charlesworth in the State of

Utah and finalized August 12, 1983. With the reaffirmation by the Trial Court of the Commissioner's recommendation, Defendants filed their Notice of Appeal to this forum.

STATEMENT OF THE ISSUES

1. Whether the District Court abused its discretion in an equity matter.

2. Whether the District Court has jurisdiction to adjudicate visitation privileges in a proceeding under the URESA when the original Decree was entered in the responding state.

3. Whether the payment of child support can be terminated or withheld as a result of the non-custodial parent being unable to exercise his rights of visitation.

STATEMENT OF FACTS

On February 1, 1983, the Respondent as Plaintiff filed a Complaint in the District Court of Weber County for a divorce. Almost immediately or simultaneously, the Defendant/Appellant left the State of Utah for Santa Monica, California, and the Respondent obtained service by publication of Summons. (See Trial Record pp. 1, 4 and 11)

Thereafter the Plaintiff was awarded a Decree of Divorce on August 12, 1983, by the Honorable Douglas L. Cornaby, District Court Judge, with an award of the minor children of the parties to the Defendant subject to reason-

able visitation by the Plaintiff and a further Order in the Decree that child support should be held in abeyance until further order of the Court. (See Trial Record pp. 13-23).

Thereafter on July 5, 1988, almost five years after the entry of the original Decree of Divorce, the Defendant/Appellant by and through the Assistant Attorney General of the State of Utah under the Utah Uniform Reciprocal Enforcement of Support Act (hereinafter referred to as URESA), filed a Petition for child support. (See Trial Record p. 26-41). The Department of Social Services for the State of Utah served the Petition for support and Order to Show Cause upon the Plaintiff/Respondent under and pursuant to the Utah URESA, Utah Code Annotated § 77-31-1, 1953 as amended.

A hearing was held before the Domestic Relations Commissioner, Maurice Richards, on the 18th day of October, 1988, wherein the Commissioner recommended that commencing November, 1988, the Plaintiff/Respondent pay to the Defendant/Appellant $76.00 per month per child as and for the three (3) minor children, but that the Weber County Clerk's Office be directed to hold the funds until the Defendant allowed the Plaintiff visitation with the minor children, which was entered November 14, 1988. (See Trial Record pp. 58 & 59)

Thereafter on November 16, 1988, Defendant/Appellant filed an objection to the Recommended Order on the grounds that the District Court lacked jurisdiction to address any other issues other than child support since it was a URESA action and requested a hearing in front of a Judge. (See Trial Record pp. 60-61). The objection hearing was heard on December 12, 1988, with argument by the parties through their counsel. The Trial Court affirmed the recommendations of the Commissioner and reserved the ruling on the support abatement, ordering the child support be held by the Clerk. Plaintiff was allowed visitation the day after Christmas with counsel scheduling a future hearing date for a report on the status of visitation arrangements. (See Trial Record p. 65).

On March 13, 1989, a review was had on the visitation and a possible release of child support monies, before the Honorable Stanton M. Taylor, Judge Presiding, and evidence was presented that the Plaintiff/Respondent was still unable to contact the Defendant for visitation and had not seen his children since Appellant's original leaving from the State of Utah in February of 1983. The Trial Court again ordered that all payments of support made by the Plaintiff/Respondent should remain with the Clerk of the Court until such time as the Plaintiff was able to contact the

Defendant and work out visitation with his three (3) minor children. (See Trial Record pp. 73-74).

From this Order the Appellant filed a Notice of Appeal bringing this matter to the attention of this Court. (See Trial Record p. 75).

SUMMARY OF ARGUMENTS

1. The Appellate Court in reviewing matters in equity and more specifically, in a divorce action, will refrain from disturbing the findings of the Trial Court unless a clear abuse of discretion is shown.

2. The Trial Court did not err in exercising jurisdiction over the issue of visitation and child support as that had already been conferred, both in personam and subject matter jurisdiction from the previous divorce action regardless of the pending URESA action.

3. The retainage by the Trial Court with the Clerk of the Court of a child support payment can be made contingent upon an obligation by the custodial parent to allow free exercise of visitation, especially in view of a potention contempt situation and failure to comply completely with the URESA statute.

ARGUMENT

POINT I.

THIS COURT WILL NOT DISTURB THE FINDINGS OF THE TRIAL COURT UNLESS THERE IS A

CLEAR ABUSE OF DISCRETION IN A DIVORCE PROCEEDING.

The standard for reviewing matters in equity was recently considered by the Utah Supreme Court in J & M Const., Inc., v. Southam, 722 P.2d 779 (Utah 1986), wherein the Court held as follows:

> In reviewing matters in equity, this Court will reverse the trial court only [emphasis added] when the evidence clearly preponderates against the findings below. Although we may review that evidence, we are particularly mindful of the advantaged position of the trial court to hear, weigh, and evaluate the testimony of the parties. (cite omitted) Where the evidence may be in conflict, this Court will not upset the findings below unless the evidence so clearly preponderates against them that this Court is convinced that a manifest injustice has been done...

The Court of Appeals of Utah in the recent decision of Boyle v. Boyle, 735 P.2d 669 (Utah App. 1987) held as follows:

> This Court will refrain from disturbing findings of the trial court in a divorce action unless a clear abuse of discretion is shown. (cite omitted) The trial court is clearly in the best position to weigh the evidence, determine creditabilty and arrive at factual conclusions...

POINT II.

THE DISTRICT COURT DID NOT ERR IN EXERCISING JURISDICTION WHICH IT PROPERLY HAD TO HEAR AND ADJUDICATE THE ISSUES

INVOLVING VISITATION AND CHILD SUPPORT REGARDLESS OF THE PENDING URESA ACTION.

The State of Utah in behalf of the State of California has argued that the Weber County District Court lacks jurisdiction to hear and adjudicate issues involving visitation in a URESA action. In support of this premise and argument, the Appellant cites this Court to several cases, none of which are Utah cases so they are therefore persuasive and not binding case law.

A careful and thorough review of each of the cases would indicate that their facts are very distinguishable from the immediate case at hand. In Patterson v. Patterson, 581 P.2d 824 (Kan. App. 1978), a Decree of Divorce was entered in Texas where the Court ordered the father to pay child support, granting custody to the mother and awarding the father rights of visitation. Thereafter the father moved to Kansas and the mother initiated a URESA petition seeking enforcement of the child support order in the responding State of Kansas, or the state in which the father presently was residing with the petitioner still residing in the State of Texas or the original state of divorce. The Kansas Court of Appeals did reverse the Trial Court in conditioning disbursement or payment of the child support upon the mother fulfilling the father's visitation rights, explaining that this order was beyond the jurisdiction of

the State of Kansas, the state the father had moved to. It is true that nothing in the Act had allowed the adjudication of child custody, visitation privileges or other matters, only determined in domestic relations cases. The Patterson case as well as all other cases cited by the Appellant is distinguishable from the immediate case at hand because in this case the Appellant who is the petitioning party was divorced in this State and voluntarily moved to the State of California during the time of the divorce, taking the minor children with her, while the Respondent who is the obligor has remained in the same county in the State of Utah throughout this action, having originally initiated the divorce in the State of Utah. The Respondent did obtain reasonable rights of visitation and an Order that child support be held in abeyance until further order of the Utah Court, which was signed on the 12th day of August, 1983.

Under the Utah Code Annotated § 30-3-5, and particularly subsection (3), the Code authorizes this State to continue to adjudicate and determine matters of child support and visitation, which states as follows:

> (3) The Court has continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties, the custody of the children and their support, maintenance, health, dental care, or the distribution of the property as is reasonable and necessary.

Accordingly, under the Utah Code Annotated, the State of Utah maintains jurisdiction on a continuing basis for any subsequent modification or enforcement of the Decree of Divorce and its terms, including the enforcement of reasonable rights of visitation, which in this case were granted by the Trial Court after proper service of the Complaint upon the Appellant.

The Utah Code Annotated § 78-27-24 in particular subparagraph (6) confers "long-arm" jurisdiction over the Appellant with service accomplished pursuant to Rule 4 of the Utah Rules of Civil Procedure which in this case was a Summons done by publication. Subsection (6) of the Utah Code Annotated § 78-27-24 reads as follows:

> Any person, notwithstanding § 16-10-102, whether or not a citizen or resident of this state, who in person or through an agent does any of the following enumerated acts, submits himself,... to the jurisdiction of the courts of this state as to any claim arising from:
> (6) With respect to actions of divorce , separate maintenance, child support, having resided in, the marital relationship, within this state, notwithstanding subsequent departure from the state;...

The Appellant in this divorce action took the minor children of the parties from the State of Utah on the day of or subsequent to the filing by the Respondent for the divorce in the State of Utah, and fled with the minor

children to the State of California. During that more than six (6) year time period, the Respondent has not had any access, either telephonically or in person or by mail, with the Appellant nor the parties' minor children. This fleeing from the State of Utah did not deprive the State of Utah of its "long-arm" jurisdiction, because the Utah Code Annotated § 78-27-24(6) indicates that since the parties resided in a marital relationship within this State, notwithstanding any subsequent departure from this State, the Appellant is subject to the jurisdiction of this State with respect to actions of divorce, separate maintenance or child support.

Accordingly, because the State of Utah is the state of original jurisdiction wherein the divorce was commenced, completed and an Order or Decree of Divorce having been entered regarding child support and child visitation, this Court has continuing jurisdiction in regards to those matters and the Appellant by availing herself of this action, even though through a State agency and through a URESA petition, such action does not deprive this State of its continuing jurisdiction to grant to the Respondent and consider issues of contempt or failure to allow visitation.

Constitutionally the XIV Amendment of the Constitution of the United States, in particular Section 1, states:

> ...No state shall make or enforce any law which shall abridge the

> privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the protection of the laws.

Even more importantly, the Constitution of Utah, Article 1, Section 7, states:

> No person shall be deprived of life, liberty, or property, without due process of law.

Under these facts, to deny the Respondent his full rights under the Decree of Divorce without a full hearing on not only the issue of modification for child support reasons, but also whether or not there is contempt or a failure by the Appellant to obey a Court Order such that she is availing herself of the laws of the State of Utah with "unclean hands" would be a denial of the Respondent's procedural due process rights, depriving him of income for support of children that he has not seen since the original entry of the Decree of Divorce in 1983.

In State ex rel. State of Washington v. Bozarth, 722 P.2d 48 (Or. App. 1986), as cited by the Appellant, the Oregon Court of Appeals determined that "interference with visitation rights may not be raised in" a URESA petition. In that case a proceeding for enforcement of child support under URESA was initiated in the State of Washington and transferred to the State of Oregon, and the State of Oregon

refused to exercise jurisdiction for any purpose other than the collection of child support. Again, as in the previous case cited by the Appellant and as distinguishable from this case, the parent and child that were seeking the child support resided in the State of Washington which was the home state of the Defendant child, and which state would have subject matter jurisdiction and personal jurisdiction to determine custody and visitation and not the State of Oregon where the obligor resided. Any interference with visitation rights was not a defense to the proceeding involving the dependent child whose home state was Washington. In this case a URESA action was brought to this State, the original state of the divorce which has continuing jurisdiction as distinguishable from the original State of Washington in Bozarth, supra, which was bringing the proceeding in the State of Oregon where the obligor resides. Additionally, the State of Oregon has a statute, to-wit: ORS 110.176 which provides that ORS 107.431 in modification proceedings changes the common law rules of support obligations and visitation rights as independent. Under the Oregon statute ORS 110.176, ORS 107.431 shall not apply to a proceeding under URESA when the child to whom a duty of support is owed is in another state which has enacted the Uniform Child Custody Jurisdiction Act, and a Court in that

state would have subject matter and personal jurisdiction under that Act to determine custody and visitation rights. Therefore another distinguishable fact between the immediate case and the Bozarth case is that Utah does not have a statute at all similar to ORS 107.431 or ORS 110.176.

In the case of State of Oregon, ex rel. State of Alaska, Child Support Division, ex rel. Lacey v. Hargrove, 747 P.2d 366 (Or. App. 1987), the Oregon Court relied on Bozarth, supra, and another Oregon statute, to-wit: ORS 25.240, wherein the Oregon legislation clearly indicated that parents may not use legal custody as a shield to deny support obligations under ORS Chapter... 110 or URESA. Again, that case is distinguishable from the immediate case at hand in that there is not in the State of Utah any of the three statutes referred to in the two Oregon cases, and as cited earlier, this State Court or the Trial Court does have continuing jurisdiction to determine matters raised by either of the parties in regards support and visitation.

In the Wisconsin case of State ex rel. Hubbard v. Hubbard, 329 N.W.2d 202 (Wis. 1983), cited by Appellant, facts are distinguishable from the immediate case at hand. The State of California has both subject matter jurisdiction and personal jurisdiction over the two parties having entered the original Decree of Divorce and having entered an

order of support. The support order was under URESA transferred to the State of Wisconsin where the obligee resided and the Wisconsin Court determined that it did not have jurisdiction under URESA or an interstate enforcement of a support obligation to consider matters of custody, visitation or custodial parents contempt because the responding Court's consideration of those issues would burden the efficiency of the URESA mechanism. Again, as distinguished from the immediate case at hand, the Wisconsin Court had not entered the original Decree of Divorce and specifically indicated that California, the initiating state, had original subject matter jurisdiction and personal jurisdiction over the parties to consider these issues.

In the case of Vigil v. Vigil, 494 P.2d 609 (Colo. App. 1972), the facts are again distinguishable from this immediate case in that the parties never availed themselves of a divorce action in either the responding state of Colorado where the obligor resided nor in the initiating state of California where the obligee resided. The parties had not been divorced, the custodial parent had simply left the State of Colorado with the children to the State of California and thereafter initiated a URESA action to obtain an Order for the support of the children. Neither a divorce nor custody nor visitation nor support were ever addressed

in either one of the states and there was no continuing jurisdiction in the State of Colorado or California as there is in the State of Utah in the immediate case at hand.

In the Colorado Supreme Court case of County of Clearwater v. Petrash, 598 P.2d 138 (Colo. 1979) (En Banc), although the parties were divorced in the State of Colorado and it was the responding State as in the immediate case at hand, the State of Colorado has a specific and direct statute on point in its URESA statute found at § 14-5-124, C.R.S. 1973 (1978 Supp.) which provides in part that:

> ...The determination or enforcement of a duty of support owed to one obligee shall be unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

The State of Utah does not have a similar statute directly on point, and in fact it does have a statute cited earlier indicating that this Court would have continuing jurisdiction under the immediate facts where the Decree was granted in the State of Utah allowing for specific visitation rights and not granting child support.

The Appellant then cites this Honorable Court to the Utah Code Annotated §§ 77-31-38, 77-31-31 and 77-31-9. In contrast to those statutes, the Respondent five or six years prior to any action taken through a URESA petition had already established subject matter jurisdiction and personal

jurisdiction over the Appellant and the Respondent through a divorce action that was filed and properly served in the State of Utah. Jurisdiction does exist for that reason and continues pursuant to Utah Code Annotated § 30-3-5 for this Court, in particular the Weber County District Court, to reconsider those issues originally brought in the Complaint for divorce and which were entered in the Divorce Decree by this Court as a direct, if not an ancillary proceeding to the URESA petition which more than simply coincidentally was brought in the same exact action with the same exact civil number, rather than as an independent action.

The Pifer v. Pifer, 229 S.E.2d 700 (N.C. 1976) case again involves parties that were divorced in the State of Florida, the obligor moved to another state, North Carolina, and subsequent thereto the obligee filed a petition for support in Florida under a URESA action which was transferred to North Carolina and the North Carolina Court found that there was no jurisdiction over the subject matter, therefore, the judgment was void. Again, those facts are distinguishable from the immediate case at hand as indicated earlier. In this case the obligor has remained in the State where the divorce was entered, there is continuing jurisdiction, both subject matter and personal, over the obligee, which is distinguishable from North Carolina attempting to

exercise subject matter and/or personal jurisdiction over an obligee who has simply initiated a URESA petition in that state where the original divorce was in her resident state of Florida.

The case of Hoover v. Hoover, 246 S.E.2d 179 (S.C. 1978) cites to Pifer, supra, in holding that a Court of a responding state has no jurisdiction to adjudicate matters of visitation. But a careful review of that case would again indicate that it is distinguishable from this case. In Hoover, no divorce action was ever initiated in either the initiating or responding state, but instead Mrs. Hoover initiated an action in Michigan, the initiating state under the URESA provisions for support of herself and of the two children, which action was transferred to South Carolina as a responding state. South Carolina refused to exercise and recognize jurisdiction for the adjudication of child custody or visitation privileges. Again, no action was ever initiated in South Carolina by either of the parties other than through the URESA, whereas in the immediate case the divorce was initiated and concluded in Utah and there is continuing jurisdiction over those matters.

In Bowen v. Olsen, 246 P.2d 602 (Utah 9152), it simply stands for the premises that if a judgment is entered without jurisdiction the Order is void on its base for lack

of jurisdiction. That is not the issue here. If jurisdiction is indeed lacking, then any judgment entered without jurisdiction would be void but the Respondent's argument is that there is continuing jurisdiction and personal and subject matter jurisdiction to enter an Order in regards to visitation and support independent and ancillary of the URESA action.

In Fitzwater v. Fitzwater, 294 N.W.2d 249 (Mich. 1980), the Court of Appeals specifically held that "[T]he Act does not, of course, grant in personam jurisdiction over a non-resident party not otherwise subject to the power of the Michigan Courts." Again in this case, the parties were already subject both in personam and under subject matter to the jurisdiction of the State of Utah distinguishing this case.

In Thompson v. Kite, 522 P.2d 327 (Kan. 1974), the state of divorce and where all parties resided with the exception of the ex-husband, was Missouri, which was also the initiating state. The State of Kansas, which was the *responding state and which is where the obligor resided*, refused to submit the obligee to the jurisdiction of the responding Court in other independent proceedings involving collateral matters. Again, this case is distinguishable because no divorce proceedings were ever initiated in the

responding State of Kansas, all action was taken other than the URESA action in the State of Missouri.

Accordingly, with a review of every single case cited by the Appellant, the District Court of Weber County, State of Utah, based on the authority cited by Respondent, maintains continuing jurisdiction both in personam and subject matter over the parties concerning all issues including not only child support, but visitation, be they ancillary or directly dependent matters in relation to the URESA action seeking child support. If for no other reason than that of judicial economy with the fact that there is continuing jurisdiction in the State of Utah over these matters, the Weber County District Court for the State of Utah did have jurisdiction and the Court did not err in exercising jurisdiction to hear and adjudicate an issue involving visitation as either an ancillary dependent or independent cause of action pursuant to a URESA petition in the same exact civil action. The Order of the District Court Judge should be affirmed.

POINT III.

A CONTINUOUS PAYMENT OF CHILD SUPPORT AS AN OBLIGATION CAN BE MADE CONTINGENT UPON THE FREE EXERCISE OF VISITATION.

The Appellant is not seeking child support arrearage, which Respondent believes she would not be entitled to

anyways under Larsen v. Larsen, 561 P.2d 1077 (Utah 1977), wherein the Utah Supreme Court held that "alimony and support payments become unalterable debts as they accrue and therefore a periodic installment cannot be changed or modified after the installments have become due". In the immediate case the Trial Court specifically found that there was to be no payment of child support until further order of the Court.

In regards to an adjudication as to issues of visitation and child support and their inter-relation, while it is true that the Utah Code Annotated § 78-45-3 states that "every man shall support his child;...", and that Hills v. Hills, 638 P.2d 516 (Utah 1981), and the other cases cited by the Appellant would indicate that the "right to support from the parents belongs to the minor children and is not subject to being bartered away, extinguished, stopped or in any way defeated by the agreement or the conduct of the parents." The Utah Supreme Court did find in Peterson v. Peterson, 530 P.2d 821 (Utah 1974), that the custodial parent seeking payment of child support after the Trial Court in that case had entered the following Order: "The payment of child support is suspended until such time as the Plaintiff appears in person... and purges herself of contempt." was not entitled to Court action. In Peterson,

some nine and a half years prior to the bringing of a petition to modify to award child support to the custodial parent, the non-custodial parent brought an Order to Show Cause why the custodial parent should not be held in contempt for failure to comply with the visitation rights provision and the Order cited to above was entered as a result thereof.

The Utah Supreme Court in Peterson further held as follows:

> There is no question but that Mrs. P was in contempt of court, after having been in such straits for 9½ years, when she applied for the support money judgment, without have purged herself of the contempt. That requirement was a condition precedent to obtaining the support money, i.e., -the exercise of Mr. P's right to see his children. Mrs. P had not permitted this, which became the basis for her contempt. In short, she had not done and is not doing equity the while she insists on it, by now seeking, without any displayed penitence, remorse or strings attached, to invoke the very jurisdiction of the same court that she flouted before. She was in no conscionable position to do so and the court need not have entertained her petition. To coin a paraphrased maxim of equity and reduce it to pigeon English, "One may not make a monkey out of the Court," - without cause, that is.

In the immediate case at hand, although admittedly an Order to Show Cause for contempt has not been brought, the Trial Court had ordered in the original Decree of Divorce

six years earlier, that child support be held in abeyance until further order of the Court while at the same time ordering custody in the Appellant subject to reasonable visitation by the Respondent.

In both of the transcripts, testimony was proffered that the Respondent has never seen the children since February of 1983, and accordingly the Trial Court in affirming the recommendation of the Commissioner did order the payment of child support at the rate of $76.00 per month per child and did also conditionally order that that money be held in abeyance and not disbursed until such time as visitation under the Utah Court Order originally entered six years previous was complied with. This in effect would constitute a contempt which has yet to be purged by the Appellant. The Appellant is attempting to exercise in equity the jurisdiction of this Court through a URESA action which is somewhat misleading in that even though the initiating state was the State of California, the actual support order being enforced is a support order established in the State of Utah modifying an original Utah Decree of Divorce. The Appellant has come into the Court with "unclean hands".

In the Utah Supreme Court case of Johnson v. Johnson, 560 P.2d 1132 (Utah 1977), an ex-spouse brought an Order to Show Cause and contempt citation against the former husband

on a claim of willful disobedience of the Divorce Decree as it pertained to payment of debts and obligations, utilities and attorney's fees. The Supreme Court in that case chose not to believe the former wife's testimony that she knew nothing about damage to a truck and camper allegedly in her possession and concluded that she was without "clean hands", and thus not in a position to seek equity, resulting in the dismissal of the Order to Show Cause and contempt citation.

The Court held as follows:

> As general rule , party in contempt will not be heard by court when he wishes to make a motion or grant a favor.
>
> In this case, after a review of the evidence, the Court chose not to believe Appellant's testimony that she knew nothing about the damage to the truck and camper and concluded she was without "clean hands" and hence not in a position to seek equity and the Court was well within the bounds of discretion in dismissing the Order to Show Cause and contempt citation.

Neither of the cases cited by the Respondent have been overturned or modified and should be taken into consideration in light of the Appellant's constant refusal to grant the Respondent visitation.

As a further issue as to whether or not this Court should simply recognize the Petitioner's request for child support while ignoring other issues, the applicable Utah

URESA statute found at Utah Code Annotated § 77-31-1 et. seq. in particular UCA § 77-31-11 entitled "Contents of Petition for Support", states as follows:

> The petition shall be verified and shall state the name and, so far as known to the petitioner, the address and circumstances of the respondent and his dependents for whom support is sought, and all other pertinent information.

Neither the initiating State of California nor the responding State of Utah has stated the address of the dependents for whom support is sought so that a question arises as to the actual validity of the URESA petition. It has been a practice of the Department of Social Services and in particular the Office of Recovery Services under the Attorney General, to interpret § 11 of the Utah URESA to require the original petition to state the address and circumstances of the Respondent and his dependents for whom support is sought and to require that the obligee provide and update the address for the children. If the current address is not provided, then the agency feels the Court should hold the forwarding of any child support payments made by the obligor until the address is provided.

Accordingly, based upon the case authority of the Respondent and the policy of the Department of Social Services, the Office of Recovery Services, the Commissioner as affirmed by the Trial Court is fully within legal rights

to condition the payment to the State agency upon the allowance of the Respondent to exercise his visitation rights as established by the Trial Court six years previous and which have been and are still being denied to the present date.

CONCLUSION

The District Court of the State of Utah in Weber County, had from 1983 to the present, both in personam and subject matter jurisdiction over the parties and continuing jurisdiction under Utah statutes, and particularly in light of the URESA petition being filed as part of the original 1983 divorce action to intermingle the issue of on-going child support and visitation and consider both simultaneously or one as an ancillary but considerable cause of action. With the in personam and subject matter jurisdiction to consider those issues, the Commissioner as affirmed by the Trial Court did not abuse its discretion in the allowing an order of child support at the rate of $76.00 per month per child as in essence a modification of the original Decree of Divorce which allowed no support until further order of the Court. It was not an abuse of discretion to condition the release of those monies from the custody of the Court upon the allowance by the Appellant of visitation as ordered by

the Trial Court more than six years ago and which has never been allowed.

WHEREFORE, the final Order of the Trial Court should not be reversed but should be affirmed and costs awarded.

DATED this 18 day of September, 1989.

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IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

LAURIAN P. CHARLESWORTH, Plaintiff, vs. BLANCA H. CHARLESWORTH, Defendant.	FINDINGS OF FACT AND CONCLUSIONS OF LAW Civil No. 84525

This action came on regularly for hearing on the 1st day of August, 1983, before the Honorable Douglas L. Cornaby, Judge of the above-entitled Court; MAX D. LAMPH appearing as counsel for Plaintiff and Plaintiff appearing in person, and Defendant having been duly served with process and her default for failure to answer or otherwise plead to Plaintiff's Complaint within time allowed by law, and the Court having heard the evidence introduced by Plaintiff, and the matter being submitted to the Court for its decision, and the Court being fully advised in the premises now makes and enters it:

FINDINGS OF FACT

1. That Plaintiff now is and for more than three months next prior to the commencement of this action has been an actual and bona fide resident of

2. That Plaintiff and Defendant were married to each other in Los Angeles, California, on April 14, 1979, and ever since have been and now are husband and wife.

3. That three children have probably been born as issue of this marriage, to-wit: JOSEPH, born February 3, 1980, and PATRICK, born January 7, 1982, and possibly a third child born in March 1983.

4. That Defendant has been guilty of cruel treatment of the Plaintiff to the extent of causing him great mental distress in that Defendant was never satisfied with Plaintiff's employment and Defendant frequently absentized herself from the home of the parties and returned to live with her folks, and Defendant informed Plaintiff that she was no longer in love with him.

5. That the Plaintiff has been employed at Westland Ford since July 1982, and has an average gross earnings of approximately $750.00 per month.

From the foregoing facts, the Court now makes and enters its:

CONCLUSIONS OF LAW

1. That a Decree of Divorce should be entered in favor of Plaintiff and against Defendant, provided, that the Decree should not become final until November 1, 1983.

2. That the Plaintiff should be awarded the personal property now in his possession.

3. That the minor children of the parties should be awarded to the Defendant, subject to reasonable visitation by the Plaintiff.

4. That child support should be held in abeyance until further order of the Court.

DATED this 12 day of August, 1983.

DOUGLAS L CORNABY
District Judge

MAX D. LAMPH
Attorney for Plaintiff
2564 Washington Blvd. #1
Ogden, Utah 84401
Telephone: 399-5885

IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

LAURIAN P. CHARLESWORTH,

Plaintiff,

vs.

BLANCA H. CHARLESWORTH,

Defendant.

DECREE OF DIVORCE

Civil No. 84525

This action came on regularly for hearing on the 1st day of August, 1983, before the Honorable Douglas L. Cornaby, Judge of the above-entitled Court; MAX D. LAMPH appearing as counsel for Plaintiff and Plaintiff appearing in person, and Defendant having been duly served with process and her default for failure to answer or otherwise plead to Plaintiff's Complaint within time allowed by law, and the Court having hearing the evidence introduced by Plaintiff, and the matter being submitted to the Court for its decision, and the Court being fully advised in the premises and having heretofore made and entered its Findings of Fact and Conclusions of Law in writing, NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that a Decree of Divorce be and the same is hereby entered in favor of Plaintiff

and against Defendant, and that this Decree shall become final on November 1, 1983.

IT IS FURTHER ORDERED that Plaintiff be and hereby is awarded the personal property now in his possession.

IT IS FURTHER ORDERED that Defendant be and hereby is awarded the care, custody and control of the minor children of the parties, subject to reasonable visitation by the Plaintiff.

IT IS FURTHER ORDERED that child support be held in abeyance until further order of the Court.

DATED this 12 day of August, 1983.

DOUGLAS L. CORNABY
District Judge

DAVID L. WILKINSON #3472
Attorney General
MICHAEL D. SMITH #3008
Assistant Attorney General
Chief, Civil Enforcement Division
RICHARD J. CULBERTSON #4021
Assistant Attorney General
Attorney for Plaintiff
2540 Washington Blvd., 4th Floor
Ogden, Utah 84401
Telephone: (801) 626-3512

IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

LAURIAN P. CHARLESWORTH, Plaintiff, vs. STATE OF CALIFORNIA AND BLANCA H. CHARLESWORTH, Defendant.	:	PETITION FOR SUPPORT (URESA Case) Civil No. 84525

COMES NOW the above-named defendant, by and through the Attorney General's Office, who complains of plaintiff and alleges as follows:

1. This is a proceeding brought under the Uniform Reciprocal Enforcement of Support Act, 77-31-1, Utah Code Annotated, 1953, as amended.

2. That said action was initiated with the State of California, which is one of the States adopting said Act. The Clerk of this Court received from the Clerk of the Superior Court, of the State of California, in and for the County of Los Angeles, the attached documents, which are by reference made a part of this Petition.

3. That included in said papers are the following: URESA Petition, Certificate and Order. That said Certificate provides, in part, that defendant owes a duty of support for the support and maintenance of his minor child(ren).

4. That plaintiff is domiciled at 2054 Orchard Avenue, in Weber County, Utah, and within the jurisdiction of the above-entitled Court, and is subject to the provisions of said Act.

5. That the undersigned is the duly assigned Assistant Attorney General charged with the responsibility of said proceedings for the Second Judicial District, State of Utah, the responding State.

WHEREFORE, defendant prays the Court issue its Order to Show Cause requiring defendant to appear and show cause why he should not be ordered and required to pay a reasonable sum each month for and as the support of his minor child(ren), why judgment should not be awarded for child support in arrears, and for other relief.

DATED this 30 day of June, 1988.

DAVID L. WILKINSON
Attorney General

By: Richard J. Culbertson
RICHARD J. CULBERTSON
Assistant Attorney General
Attorney for Plaintiff

PETE N. VLAHOS, #3337
VLAHOS, SHARP, WIGHT & WALPOLE
Attorney for Plaintiff
Legal Forum Building
2447 Kiesel Avenue
Ogden, Utah 84401
Telephone: (801) 621-2464

IN THE DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

LAURIAN P. CHARLESWORTH, Plaintiff, vs. STATE OF CALIFORNIA and BLANCA H. CHARLESWORTH, Defendants.	)	RECOMMENDED ORDER ON ORDER TO SHOW CAUSE CIVIL NO: 84525

This matter having come on regularly for hearing on the 18th day of October, 1988, before the Honorable Maurice Richards, Commissioner of the Domestic Relations Court, sitting without a jury, on the Defendant's Reciprocal Non-Support action, and the Plaintiff appearing in person and with his attorney, Pete N. Vlahos, and the Defendant, Blanca H. Charlesworth, not appearing in person and Attorney Carl Perry appearing in behalf of the Defendants, and argument having been made to the Court by both attorneys, and the Court being fully cognizant of all matters

pertaining therein, enters the following Recommended Order on Order to Show Cause and is set forth as follows:

1. That Plaintiff is not granted any judgment for any arrearages in the above matter.

2. That commencing November, 1988, the Plaintiff shall pay to the Defendant the sum of $76.00 per month per child as and for support for three (3) minor children, said payments shall be made to the Weber County Clerk's Office in two equal installments, one-half on the 5th and one-half on the 20th.

3. That the Weber County Clerk's Office is directed to hold said funds until the Defendant, Blanca H. Charlesworth, allows the Plaintiff visitation with the minor children.

4. That the Court at this time concludes reasonable visitation to be four (4) weeks in the summer, plus Christmas Day at noon and for four (4) days thereafter, provided however, the Plaintiff shall pay the costs of transportation to and from the Defendant's residence.

Wahlen & Sharp
ATTORNEYS AT LAW
LEGAL FORUM BUILDING
2447 KIESEL AVENUE
OGDEN, UTAH 84401

Charlesworth vs. State of California, et al.
Civil No: 84525

CLERK

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5. That during the summer visitation the child support shall be abated in total. That there will be no abatement during the Christmas vacation.

DATED this 14 day of ~~October~~ November, 1988.

HONORABLE MAURICE RICHARDS
Commissioner, Domestic
Relations Court

APPROVED AS TO FORM:

CARL PERRY
Attorney for Defendants

OGDEN, UTAH 84401

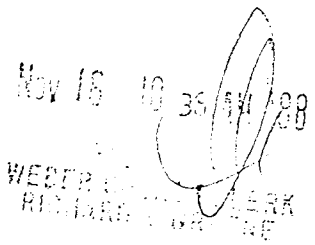
O R D E R

The above and foregoing Recommended Order on Order to Show Cause signed and approved by the District Court on this 15 day of ~~October~~ Nov, 1988.

BY THE COURT:

DISTRICT COURT JUDGE

DAVID L. WILKINSON #472
Attorney General
MICHAEL D. SMITH #3008
Assistant Attorney General
Division Chief, Civil Enforcement
KARL G. PERRY #2570
Assistant Attorney General
2540 Washington Blvd., Fourth Floor
Ogden, Utah 84401
Telephone: (801) 626-3512



IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

LAURIAN P. CHARLESWORTH, Plaintiff, vs. STATE OF CALIFORNIA and BLANCA H. CHARLESWORTH, Defendant.	:	OBJECTION TO RECOMMENDED ORDER Civil No: 84525

COMES NOW, Karl G. Perry, counsel for the State of Utah and the defendant State of California pursuant to the Uniform Reciprocal Enforcement Act and objects to paragraphs 3 and 4 of the proposed Recommended Order of Maurice Richards on the hearing dated October 18, 1988 on the following grounds:

That the court lacked jurisdiction to address any other issues other than child support since this is a URESA action, see UCA 77-31-31, 1953 as amended. Case law from other jurisdictions demonstrates that the Utah statute comports with the majority position on the limited jurisdiction involved in the URESA

proceedings. See Patterson v. Patterson, 581 P.2d 824 (Kan. App. 1978); See also Thompson v. Kite, 522 P.2d 327 (Kan. App. 1974); and State ex rel., State of Washington v. Bozarth, 722 P2d. 48 (Ore. App. 1986).

Although these precedents from other jurisdictions are not controlling authority over this court, the Utah URESA provisions express clear legislative intent for courts to interpret the Utah provisions in accordance with interpretations given to URESA provisions from other jurisdictions. The act states in UCA 77-31-38 1953 as amended as follows: "this act shall be so interpreted and construed as to effectuate it's general purpose to make uniform the law of those states which enact it". Therefore, it is respectfully requested that those provisions of the Recommended Order dealing with child visitation be stricken and the rest of the Order be allowed to remain.

DATED this 9th day of November, 1988.

KARL G. PERRY
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the Objection to Recommended Order was mailed to the plaintiff's attorney, Pete N. Vlahos at Legal Forum Building 2447 Kiesel Avenue, Ogden, Utah 84401 on the 9th day of November, 1988.

Secretary

PETE N. VLAHOS, ESQ., #3337
VLAHOS, SHARP, WIGHT & WALPOLE
Attorney for Plaintiff
Legal Forum Building
2447 Kiesel Avenue
Ogden, Utah 84401
Telephone: 621-2464

IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

LAURIAN P. CHARLESWORTH, Plaintiff, vs. STATE OF CALIFORNIA and BLANCE H. CHARLESWORTH, Defendants.	/	ORDER ON OBJECTION HEARING Civil No. 84525

This matter having come on regularly for review on the 13th day of March, 1989, before the Honorable Stanton M. Taylor, one of the Judges of the above entitled Court sitting without a jury for review of a previous objection hearing, and the Plaintiff appearing in person and with his attorney, Pete N. Vlahos, and the Defendants being represented by the State of Utah, to-wit: Karl G. Perry, attorney for the State of Utah, and representations having been made, and Plaintiff's attorney having offered to the Court

an exhibit concerning his attempt to contact the Defendant, Blanca H. Charlesworth, for visitation, and the Court being fully cognizant of all matters pertaining therein, enters the following Order:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That all payments of support being made by the Plaintiff shall remain with the Clerk of the Court and shall be held by the Clerk of the Court until such time as Plaintiff is able to contact the Defendant and work out visitation with the three (3) minor children.

DATED this 14 day of April, 1989.

STANTON M. TAYLOR,
District Court Judge

APPROVED AS TO FORM:

KARL G. PERRY,
Attorney for Defendants

Vlahos, Sharp
Wight & Walpole
ATTORNEYS AT LAW
LEGAL FORUM BUILDING 2447 KIESEL AVENUE
OGDEN UTAH 84401

Charlesworth vs. State of California, et al.
Civil No: 84525

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WEBER COUNTY CLERK

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5. That during the summer visitation the child support shall be abated in total. That there will be no abatement during the Christmas vacation.

DATED this 14 day of ~~October~~ November, 1988.

HONORABLE MAURICE RICHARDS
Commissioner, Domestic
Relations Court

APPROVED AS TO FORM:

CARL PERRY
Attorney for Defendants

2447 RIEGEL AVENUE
OGDEN, UTAH 84401

O R D E R

The above and foregoing Recommended Order on Order to Show Cause signed and approved by the District Court on this 15 day of ~~October~~ N.V, 1988.

BY THE COURT:

DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 15 day of September, 1989, I mailed four (4) true and correct copies of the above and foregoing BRIEF OF RESPONDENT by placing same in the U.S. Mail postage prepaid and addressed to the following:

Karl G. Perry
Assistant Utah Attorney General
2540 Washington Blvd., 4th Floor
Ogden, Utah 84401